

1 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS 2 EASTERN DIVISION 3 KRAFT FOODS GLOBAL, INC.; THE ) 4 KELLOGG COMPANY; GENERAL ) 4 MILLS, INC.; and NESTLÉ USA, ) INC., ) 5 ) Plaintiffs, ) 6 ) Case No. 11 CV 8808 -vs- ) 7 ) Chicago, Illinois UNITED EGG PRODUCERS, INC.; ) October 19, 2023 8 UNITED STATES EGG MARKETERS, ) 9:04 a.m. INC.; CAL-MAINE FOODS, INC.; ) 9 and ROSE ACRE FARMS, INC., ) ) 10 Defendants. ) 11 VOLUME 3-A 12 TRANSCRIPT OF PROCEEDINGS - Trial 13 BEFORE THE HONORABLE STEVEN C. SEAGER, and a Jury 14 APPEARANCES: 15 For the Plaintiffs: JENNER & BLOCK, LLP BY: MR. BRANDON FOX MS. SATI HARUTYUNYAN MS. AMY GALLEGOS 515 South Flower Street Suite 3300 Los Angeles, CA 90071-2246 16 JENNER & BLOCK, LLP BY: MR. MATTHEW SUMMERS 455 Market Street Suite 2100 San Francisco, CA 94105-2453 17 Court Reporter: AMY M. KLEYNHANS, CSR, RPR, CRR Federal Official Court Reporter United States District Court 219 South Dearborn Street, Room 2318A Chicago, IL 60604 Telephone: (312) 818-6531 amyofficialtranscripts@gmail.com	Page 595	1 APPEARANCES (CONT'D): 2 For Defendant KING & SPAULDING Cal-Maine Foods, BY: MS. REBECCA L. PARADIS 3 Inc.: MR. HERSHEL WANJCE 1700 Pennsylvania Avenue, NW 4 Suite 900 Washington, D.C. 20006 5 BROWN FOX PLLC 6 BY: MR. ERIC WOOD MR. BRIAN E. ROBISON 7 8111 Preston Road Suite 300 Dallas, Texas 75225 8 For Defendant Rose PORTER, WRIGHT, MORRIS & ARTHUR, LLP Acre Farms, Inc.: BY: MR. JAMES A. KING 9 MR. ALLEN T. CARTER MR. ERIC B. GALLON 10 MS. GRACE E. KARABINUS 41 South High Street 11 Suite 2900 Columbus, OH 43215 12 PORTER, WRIGHT, MORRIS & ARTHUR, LLP BY: MR. JAY L. LEVINE MR. DONALD M. BARNES 13 2020 K Street, NW Suite 600 Washington, D.C. 20006 14 PORTER, WRIGHT, MORRIS & ARTHUR, LLP BY: MR. JOSHUA M. DILLE 321 North Clark Street 15 Suite 400 Chicago, IL 60654 16 PORTER, WRIGHT, MORRIS & ARTHUR, LLP BY: MS. ANA P. CRAWFORD 250 East Fifth Street 17 Suite 2200 Cincinnati, OH 45202 18 19 20 21 22 23 24 25
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<p style="text-align: right;">Page 715</p> <p>1 Not one of these laws affected the defendants' operations during the conspiracy from 1998 to 2008. I showed you where their facilities were, south, some smaller Midwestern states. These laws were being really implemented in the coastal areas, California, New Jersey, Washington, Michigan, but they don't have facilities in Michigan. It didn't affect their operations. Some of these laws, in fact, didn't take effect until 2016 or later. It didn't affect this conspiracy. Nothing to do with it.</p> <p>10 I expect the Court will instruct you that state laws at most can be used by the defendants to try to argue that the plaintiffs somehow weren't injured after the laws were passed.</p> <p>13 That's an overview of the facts that we're going to be providing to you. I just want to quickly go over how we're going to prove it to you. What is our evidence going to be?</p> <p>16 So if we're going to prove the case to you beyond a reasonable -- beyond a reasonable doubt is not the standard. Excuse me. That's the criminal standard. We have to do it by preponderance of the evidence. More likely than not. More probable than not. That's our standard. Here's how we're going to prove it to you.</p> <p>22 You're going to hear from UEP's economic consultant Don Bell. He'll be on videotape testimony from years ago. He's passed. Many people involved in this case have passed. 25 The case is so old.</p>	<p style="text-align: right;">Page 717</p> <p>1 was the zero tolerance policy, they would tell the owner of 2 the facility to destroy the bird if they had been backfilling, 3 yes.</p> <p>4 You'll hear from Cal-Maine executives. In fact, one 5 of our first witnesses will be Dolph Baker himself, step up to 6 the witness stand. It will be as early as tomorrow. I expect 7 that he will admit when questioned about Cal-Maine's 8 participation in these programs from the beginning, early 9 slaughter, early molting, henhouse density restrictions, 10 backfilling bans, how his marketing committee ran these 11 programs, came up with the policies, their leadership on the 12 boards, how Cal-Maine was involved in this from the beginning.</p> <p>13 How he advocated for his competitors to agree to 14 engage in all of these programs, the exports, everything else. 15 And how Cal-Maine was one of the first egg producers to sign 16 on to that certified program and the extent that Cal-Maine 17 profited and how much he profited from it.</p> <p>18 You'll also hear, along with Dolph Baker, from Rose 19 Acre executives, including Marcus Rust, who was leading Rose 20 Acre at the time. He will admit in a videotaped deposition, 21 videotaped testimony, that he was concerned that UEP was 22 coordinating egg producers to restrict the supply of eggs to 23 boost prices before he joined. They knew what was happening, 24 and then they joined the program to have a say over it.</p> <p>25 He made sure that they were on every committee that</p>
<p style="text-align: right;">Page 716</p> <p>1 So Don Bell, you'll hear his own words talking about 2 it. And he's talking about being on the animal welfare 3 committee. He didn't have the background. He wasn't an 4 animal welfare specialist. He wasn't an expert. He was only 5 interested in egg numbers, egg size, mortality, and what it 6 meant economically. That's what he will say about his 7 involvement in the animal welfare committee.</p> <p>8 He wasn't an expert.</p> <p>9 He will talk about his reasons for his 10 recommendations, the economic reasons. I know that if we 11 reduced the number of birds in the U.S., the egg producers in 12 the United States will have a more profitable relationship set 13 of results.</p> <p>14 An e-mail from Don Bell to the animal welfare 15 committee before the certified guidelines started. He 16 mentioned 72 square inches calling it an arbitrary 17 recommendation. That's ultimately what the largest size was 18 that they came up with, arbitrary. But then he says, 19 absolutely no one would make this much of a change 20 voluntarily. That's the last line. It needs to be mandatory. 21 It's not in any individual's interest. We need to make the 22 industry agree to it.</p> <p>23 You'll also hear from Linda Reickard again on 24 videotape deposition that occurred years ago. She will tell 25 you about the backfilling issue that I mentioned, how there</p>	<p style="text-align: right;">Page 718</p> <p>1 mattered. The board of directors, marketing, animal welfare 2 committee, price discovery committee.</p> <p>3 All of these committees mattered. And the marketing 4 committee was the one, Dolph Baker's committee, that would 5 have recommended the early molts and early kills, correct?</p> <p>6 Yes.</p> <p>7 They engaged in the backfilling ban even though they 8 historically backfilled. Why did they do it?</p> <p>9 Well, he knew that the UEP was recommending that 10 producers stop backfilling. He knew that that recommendation 11 was essentially for economic reasons, so they produced less 12 eggs. You could assume that from that recommendation. And 13 that they always backfilled until they couldn't. They stopped 14 because of the program. Even he won't say that was voluntary.</p> <p>15 You'll also be able to see -- I've shown you some, 16 but there will be a lot of documents that you'll see, articles 17 from the United Voices, minutes from the board meetings, 18 records from the USEM and UEP, and also defendants' e-mails 19 back and forth talking about all these programs.</p> <p>20 You'll hear from the plaintiffs' purchasers. You'll 21 hear from General Mills and Kellogg. You'll learn from them 22 that they never requested certified eggs. In fact, the 23 testimony you'll hear from General Mills is that they don't 24 think that they ever purchased certified eggs. That was not 25 their intent.</p>

<p style="text-align: right;">Page 719</p> <p>1 In other words, the plaintiffs didn't make the 2 defendants do it.</p> <p>3 Until 2011, Nestlé only requested certified eggs in 4 one of its products, Häagen-Dazs ice cream. That was it.</p> <p>5 Again, after the conspiracy was over. They might point that 6 out, but that was after the conspiracy was over.</p> <p>7 Only one plaintiff, Kraft, requested certified eggs 8 in all of its products, and that was after Rose Acre sold them 9 on the program in some of the ways that they sold the others 10 on the program, touted the animal welfare benefits, said how 11 great this was from an animal welfare standpoint, said it 12 wouldn't affect supply. You'll see documents on this. It 13 won't short the market.</p> <p>14 And Kraft took the bait. It had been looking at 15 animal welfare issues on a number of -- a number of different 16 programs, meats, et cetera, and it decided to include the UEP 17 certification as part of its specs for egg purchases.</p> <p>18 But only two years later, Rose Acre changed course. 19 Kraft was saying, what's going on with these high prices? A 20 couple years before that, they said it won't affect the 21 market, it won't affect their supply. And Rose Acre came back 22 and said to Kraft, the prices were high because supply had 23 reduced based on the program. The UEP certified guidelines 24 had caused a decrease in Rose Acre's overall bird numbers. 25 That's what they told Kraft at the time, and resulted in an</p>	<p style="text-align: right;">Page 721</p> <p>1 back up here in a few weeks, and we'll ask you to deliver a 2 verdict that will be consistent, the only verdict that will be 3 consistent with the evidence, and that's the defendants 4 cheated their system and their customers. The defendants 5 artificially raised the price of eggs by restricting the 6 supply of eggs. They took actions that restricted the number 7 of eggs in the market; that Kraft, General Mills, Nestlé, and 8 Kellogg were injured by this conduct; and that the defendants 9 are liable to the plaintiffs for their conduct.</p> <p>10 Thank you very much.</p> <p>11 THE COURT: Thank you, Counsel.</p> <p>12 Members of the jury, it's lunchtime. It is 12:16.</p> <p>13 We're going to come back at 1:20. So we're going to go just a 14 little more than an hour.</p> <p>15 The cafeteria is on the second floor, as you may 16 know. Maybe you've been there already. There is a variety of 17 food there you can get.</p> <p>18 You are free to leave the building if you'd like to 19 leave the building. There are all sorts of places near the 20 building that you can eat if you'd like. If you want to eat 21 in the building and then just go for a walk, that's fine, too.</p> <p>22 Whatever you'd like. You can use your time as you choose as 23 long as you come back and be ready and raring to go at 1:20.</p> <p>24 Please take your notepads with you today. Don't 25 leave them in the courtroom. Please take them. If you leave</p>
<p style="text-align: right;">Page 720</p> <p>1 increase in production costs. A bait and switch.</p> <p>2 But it was consistent with the economist's analysis 3 that I mentioned earlier, the flock sizes overall had gone 4 down, prices went up.</p> <p>5 You'll hear from Dr. Baye, again, the economist at 6 Indiana University, he will explain to you the comprehensive 7 regression analysis he did. He will explain how small 8 fluctuation in the egg market can affect prices greatly 9 because demand is about the same, demand is pretty constant. 10 He'll talk to you about how the conspiracy caused there to be 11 billions of fewer eggs but for this conspiracy, 20 million 12 flock size reduced.</p> <p>13 And he'll talk to you about how he determined that 14 Kraft, Kellogg, Nestlé, and General Mills were injured from 15 this conduct, injured from the conspiracy because the 16 defendants' actions raised the price of egg products that they 17 paid.</p> <p>18 It's an overview of some of the evidence you're going 19 to be hearing over the next several weeks now that the 20 plaintiffs have finally gotten their day, really weeks, in 21 court.</p> <p>22 You'll hear all this evidence about how the 23 defendants conspired to artificially raise prices, restrict 24 the number of eggs in the market, cheated their customers. 25 And at the conclusion of this evidence, we'll come</p>	<p style="text-align: right;">Page 722</p> <p>1 the jury room, please leave your notepads in the jury room.</p> <p>2 Please do not talk to anyone, even your fellow 3 jurors, about what you've just heard. Don't talk to anyone 4 about the case. But do enjoy lunch and do keep an open mind, 5 and we'll see you in an hour. Okay?</p> <p>6 THE CLERK: All rise.</p> <p>7 (Jury out at 12:17 p.m.)</p> <p>8 THE COURT: All right, have a seat, everybody. I 9 don't have much to cover.</p> <p>10 Mr. Fox, you were an hour and 35 minutes, really 11 close to your estimate, so that was well within range of your 12 estimate. So thank you for being consistent with what you 13 predicted.</p> <p>14 You know, defense team, you'll start up at 1:20. I'm 15 going to let you talk until you're done. I've got a sense of 16 what your estimates are. You know, I let Mr. Fox talk. I'm 17 going to let you talk. All right?</p> <p>18 Mr. Collins, you're still going to speak first for 19 Cal-Maine, obviously?</p> <p>20 MR. COLLINS: Yes, Your Honor.</p> <p>21 THE COURT: You're welcome to do what Mr. Fox did. 22 You can have your slide deck ready to go. You can have the 23 first slide up if you choose. If you want it to be dark 24 first, if that's what you prefer, you're welcome to do that, 25 but I was always worried that the technological gods would</p>